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NEWS

Professional legal information, services, and education

June 2021

Google v. Oracle – Supreme Court Issues Landmark Opinion on Fair Use; Sidesteps Interface Copyrightability Questions

By William Morriss, Frost Brown Todd LLC

On April 5, the U.S. Supreme Court found that Google's copying of Oracle code was fair use, putting an end to a \$9 billion infringement suit, clarifying or revising several important points of copyright law, and significantly altering the legal rules for software interoperability.

The dispute between Oracle and Google stemmed from Google's desire to (1) make its Android smartphone platform similar enough to Oracle's Java programming language that the significant existing population of Java programmers could write Android applications without learning a new language, but (2) not agree to the terms Oracle insisted on for a license. Google ultimately resolved these conflicting objectives by rewriting everything that actually performed a function that a Java programmer would want performed, but keeping the names and organization of those functions (collectively referred to as an Application Programming Interface or API) so that a Java programmer could use them without having to learn an entirely new system. Oracle was

not amused, and sued, alleging that by copying its API Google had infringed its copyrights. Google responded that Oracle's API was not copyrightable and, even if it was, Google's copying was fair use and so could not be a basis for liability. The Supreme Court was presented with an opportunity to speak on both copyrightability and fair use. While it did not explicitly address copyrightability, its discussion of fair use may have made up for that omission.

The Supreme Court began its fair use analysis by focusing on the nature of the work Google had copied and concluded that this favored Google. It explained that, both because an API was "inextricably bound" with uncopyrightable concepts, and because it was a type of work that gained its value from the value of time invested by non-copyright holders (i.e., computer programmers) in learning the API's system, it was (if copyrightable at all, which was assumed for the purposes of the fair use analysis) "further than are most computer programs ...
Cont. on p. 4

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<http://lawlibrary.hamilton-co.org>

M-F 7am-4pm

Tech Tip: How to create a FREE account and set up email Alerts using Congress.gov

by Julie Koehne, Systems Librarian

Congress.gov is the official website for U.S. federal legislative information. The site provides access to accurate, timely, and complete legislative information for Members of Congress, legislative agencies, and the public. It is presented by the Library of Congress (LOC) using data from the Office of the Clerk of the U.S. House of Representatives, the Office of the Secretary of the Senate, the Government Publishing Office, Congressional Budget Office, and the LOC's Congressional Research Service.

First you will need an account. Go to <https://Congress.gov>, click on "Sign In" then click "Create an account."

The screenshot shows the Congress.gov homepage. The 'Sign In' link in the top right navigation bar is highlighted with a yellow arrow. The 'Sign In' dropdown menu is open, showing a form with 'Email' and 'Password' fields, a 'Remember Me' checkbox, and a 'Sign in' button. A yellow box highlights the 'Create an account' link at the bottom of the dropdown menu.

Enter in your email, password, then click the "Create an Account" button.

The screenshot shows the 'Create an Account' form. It includes fields for Email, Password, Confirm Password, and Alternate E-mail. A green arrow points to the 'More Options' tab on the bottom of the search box. A green box contains the text: "If you want to narrow your search by a specific collection, click on the 'More Options' tab on the bottom of the search box." The 'Create an Account' button is highlighted with a yellow box.

There are many different search forms to choose from. Each form has specific searches to help narrow your results.

The screenshot shows the Congress.gov search interface. A yellow box highlights the 'Legislation' dropdown menu on the left. The main search area shows various filters like 'Words & Phrases', 'Congress', 'Legislation and Law Numbers', 'Legislative Actions', 'Sponsors/Cosponsors', and 'Committees'. The 'Search' button is highlighted with a yellow box.

CONGRESS.GOV Advanced Searches | Browse Search Tools | jkoehne

Current Congress: "law libraries" Search Within []

Save this Search Your Saved Searches | Share/Save | Site Feedback

Refined by: "law libraries" x 117 (2021-2022) x

Hide Filters 1.5 of 5 Relevancy Expanded

Limit Your Search Uncheck all

- ☒ Committee Reports [1]
- ☒ Committee Publications [1]

CONGRESSIONAL RECORD - DAILY EDITION

1. [REMEMBERING JANE SANCHEZ](#), *Congressional Record Vol. 167, No. 60*
Issue and Section: April 05, 2021 - Extensions of Remarks (Vol. 167, No. 60)
Page: [E345 \(PDF\)](#)

Enter a title (i.e., name) for your search, and if desired, a description. Select the save button. If you already have a search with the same title, you will be prompted to choose a unique title.

Save this search: x

Title (Required)

Description

Save

Your search has been saved. Get email alerts for this saved search?

No Alerts Get Alerts

Select "Get Alerts" from the confirmation message that appears when your search has been successfully saved.

Search Tools | Support | jkoehne

Your Account x

Alerts

Saved Searches

Sign out

To request alerts for previously saved searches, click on the "Your Saved Searches" link at the top of any search results page or click on your sign in name at the top right of the page, then select "Saved Searches."

Find the search you wish to receive alerts on and select the "Get Alerts" link at the end of the row. Click on the confirm button in the confirmation message.

Saved Searches [Help](#)

Manage your saved searches on this page. To view alerts on Bills, Members or the Congressional Record, you can [view your alerts](#).

Sort by Last Saved - Newest to Oldest

Title	Description	Last Saved	Alerts
Law Library Run Search Edit Search Edit Title	search for law library within the current congress Edit Description	05/26/2021 Delete Search	Get alerts
Current Laws Run Search Edit Search Edit Title	Bills have become Law for current Congress Edit Description	05/25/2021 Delete Search	Cancel Alerts

from the core of copyright.” *Google LLC v. Oracle Am., Inc.*, No. 18-956, 2021 WL 1240906, at *13-14 (U.S. Apr. 5, 2021).

These considerations were then repeatedly invoked as the Supreme Court found that the fair use factors actually favored Google. It explained that Google’s use was transformative because it sought to create new products by providing a new platform that programmers could readily use. *Id.* at *15. It explained that the amount and substantiality of the portion used favored Google because its copying was needed to permit programmers use their knowledge and experience when they wrote new programs for Android smartphones. *Id.* at *17. It explained that the market effects also favored Google, at least in part because it was necessary to weigh the benefits of new expression Google’s copying was likely to produce and allowing Oracle to prevent others from using its API in their platforms could effectively lock up the creativity of the programmers who had invested their time and energy in learning Java. *Id.* at *17, 19. Given that the fair use factors uniformly favored Google, the Supreme Court reversed the circuit court’s determination in favor of Oracle and remanded for further proceedings in conformity with its opinion.

While the Supreme Court did not address the question of copyrightability of APIs, its treatment of fair use may ultimately have rendered that question irrelevant. This case was not the first time that courts have faced the question of copyrightability of an interface. A quarter-century ago, the First Circuit grappled with this same issue in *Lotus Development Corp. v. Borland Int’l, Inc.* In that case, Lotus had created a set of commands and organized them into a menu hierarchy that users could take advantage of to write small computer programs called macros. *Lotus Development Corp. v. Borland Int’l, Inc.*, 49 F.3d 807, 809 (1st Cir. 1995).

Just as there was no question that Google had copied the names and organization of Oracle’s functions, in *Lotus* “Borland d[id] not dispute that it

factually copied the words and arrangement of the Lotus menu command hierarchy.” *Id.* at 812. Instead, the only question was whether that copying could give rise to liability and, while the First Circuit relied on copyrightability rather than fair use, its underlying concern was the same – i.e., that allowing the copyright holder to monopolize the commands used to interface with its programs would effectively lock up users who had learned and written macros for the Lotus 1-2-3 software. *Id.* at 818. Given that this issue is essentially inherent for any kind of software interface, it is, as Justice Clarence Thomas noted in dissent, “difficult to imagine any circumstance in which [the type of code copied by Google] will remain protected by copyright.” *Google LLC v. Oracle Am., Inc.*, No. 18-956, 2021 WL 1240906 at *23.

While the Supreme Court still has not spoken on the copyrightability of APIs, its opinion in *Google v. Oracle* may nonetheless send a message that creators of APIs would be wise not to rely on the copyright system for protection. For further information, please contact [William Morriss](#) or any other member of Frost Brown Todd’s [Intellectual Property Practice Group](#).

William Morriss’ practice focuses particularly on the law as it relates to software and other technology. Since joining the firm, William has represented inventors seeking to obtain protection for software implemented inventions before the United States Patent and Trademark Office; has represented businesses and individuals in patent infringement litigation, both in defending against allegations of infringement, and in enforcing patents against accused infringers, and has assisted clients in business transactions which include software, both in negotiating and drafting contracts, and in performing due diligence review of agreements in the context of potential acquisitions, including the review for a \$335 million acquisition.

William performs pro-bono legal services through Volunteer Lawyers for the Poor. He is an expert chess player and a black belt in Aikido (a Japanese martial art).

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Changes at the Law Library

We at the Law Library are so pleased to see things returning to greater normalcy. We resumed pre-pandemic hours earlier this year, and, perhaps most importantly, re-started coffee service for our subscribers. Beginning in June we will be open to the public as well as attorneys, subscribers and county personnel. When that happens, we will be closing the door at the top of the ramp to the computer lab and to the newly renovated State Room and conference room suite, as those areas are reserved for use by Law Library subscribers and county personnel. Subscribers should please feel free to ask for the passcode at either desk in the Law Library, and we'll make sure you can access those spaces.

The conference rooms in the State Room and in the Main Room are reserved for use by subscribers. Walk-ins are always welcome, but if you know you'll need a room, please also feel free to reserve it in advance, either via our website or by calling 513-946-5300. If you let us know what type of tech or room configuration you'll need, we'll be happy to set that up for you.

We will continue to offer our CLEs as live, interactive webinars for now, but will keep you posted about any changes.

The county will be ending temperature checks in the coming weeks. As of the day of this writing, the courthouse mask mandate is still in place by court order and masks are required for all staff and patrons.

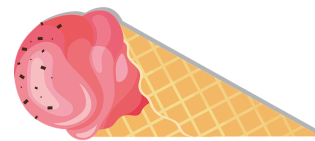
We look forward to seeing you on site this summer!



Summer Associates

Summer associates and interns at local government offices and our subscribing law firms are welcome to use the Law Library this summer. Just send us a list of names and the end date of their time with your office. They will be able to use the library at no cost to your office. Among the benefits:

- Easy access from downtown firms and courts
- Extensive practitioner-oriented online legal information
- Research guidance
- Quiet study space and conference rooms
- Access to legal research databases
- Subscribers' lounge with coffee, newspapers, and magazines
- Hard-to-find print materials including municipal ordinances, session laws, and treatises



Topical Updates

We are excited to announce the new design of the Topical Updates for 2021. If you have not signed up before and would like to start receiving substantive bi-weekly updates in one or more practice areas, please visit the topical updates page on our website to sign up. You can select from the following areas of law:

Criminal
Employment
Estates and Trusts
Family Law
Intellectual Property
Pension Benefits
Real Estate
Tax
The Supreme Court & Con Law
Torts

If you have any questions about this please feel free to contact our Reference Librarian, [Amy Kurlansky](#).

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, Wolters Kluwer Cheetah™, Bloomberg Law®, Overdrive e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Eight meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Wolters Kluwer Cheetah™

Upcoming CLEs—Live Interactive Webinars

Wednesday, June 30, 1-2 PM

Elder Financial Exploitation and Undue Influence

Presenter: Sylvia Pla-Raith, Dir. of Elder Justice Unit —Consumer Protection, Ohio Attorney General's Office

1.0 hour general credit OH & KY



CLEs on Demand

The Hamilton County Law Library is proud to announce that the following self study CLEs are available in our on-demand library:

Elder Abuse Awareness (1.0 general hour in OH, 1.0 hour in KY until July 2021)

Medicaid Planning (1.0 general hour in OH, 1.0 hour in KY until July 2021)

Complex Appeals in Ohio (1.0 general hour OH, 1.0 hour in KY until July 2021)

Fastcase 7 (1.0 general hour in OH)

Mediation (1.0 general hour in OH)

2020 Employment Cases in the US Supreme Court (1.0 general hour in OH)

Trademark & Copyright Law in 60 Minutes (1.0 general hour in OH)

CHANGE Court (1.0 general hour in OH)

Legal Issues & COVID-19 (1.5 general hours in OH)

What Does Stress Have to Do With it? (2.5 hours professional conduct in OH)

Technology & Law Resources

Law Library subscribers have access to a variety of Technology & Law Resources, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300.

The 2013 solo and small firm legal technology guide:: critical decisions made simple

KF320.A9.N45 2013

Accident prevention manual for business & industry: engineering & technology

T55 .A333 2009

AmLaw tech: a supplement to the American lawyer

K1 .M4481

Avoiding malpractice: the good, the bad, and the ugly of legal technology

KFO77.5.A95 D53 2013

Cybersecurity for attorneys

KFO75.5 .C93 2015

Digital lawyering: how to make use of technology to improve your law practice

KFO537 .D621 2011

Smart policies for workplace technologies

HF5549.5.P39 G84 2011

Start it up, reboot, or reload: the technology you need to get the most out of your practice

KFO320 .A9 S75 2011

Technology and professional conduct

KFO77.5.A95 T43 2014

This year's best in law firm technology, software, and tools

KF320.A2 T45 2016

Online Resources

EBSCO

Intellectual Property Litigation

Mass Torts

Public Domain

HeinOnline

Future Trends in State Law

Technology

Overdrive

Principles of Copyright Law

Principles of Intellectual Property Law

Westlaw

Annotated Patent Digest

Copyright Litigation Handbook

Fordham Intellectual Property, Media and Entertainment Law Journal

Harvard Journal of Law & Technology

Intellectual Property & Technology Law Journal

John Marshall Review of Intellectual Property Law

Journal of Business & Technology Law

Journal of the Patent and Trademark Office Society

Michigan Telecommunications and Technology Law Review

Patent Law Basics

Richmond Journal of Law and Technology

Santa Clara High Technology Law Journal

Texas Tech Law Review

Upcoming Events:

Monday, June 14, 2021: Flag Day, library open

Friday, June 18, 2021: Juneteenth (Observed), Library closed

Wednesday, June 30, 2021: 1-2 PM CLE: Elder Financial Exploitation & Undue Influence



June 2021 Law Library Newsletter

- INSIDE THIS MONTH**
- Tech Tip: How to create a FREE account and set up email Alerts using Congress.gov
 - Summer Associates Upcoming CLEs—Live Interactive Webinars
 - Technology & Law Resources

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